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13 PRICE SELF STORAGE HOLDINGS, LLC

14
15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 ERIC MENDEZ, individually and on
18 behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 PRICE SELF STORAGE
MANAGEMENT INC., and JOHN
22 DOES 1-10,

23 Defendants.

Case No. 3:15-cv-02077-AJB-JLB

**STIPULATION OF SETTLEMENT
("SETTLEMENT AGREEMENT")**

RECITALS

B. Following the filing of the Complaint and some informal discovery regarding the projected size and scope of the proposed Class, on January 5, 2016 counsel for Plaintiff Mendez and for PSS engaged in a full-day mediation session in Denver, Colorado with the Honorable Matthew Railey (Ret.) of the Judicial Arbitrator Group, Inc. (“JAG”), a well-respected mediator, in an attempt to resolve the case.

1 C. Through the mediation process, the Parties conducted further informal
2 discovery and exchanged additional information regarding the size and scope of the
3 proposed class and PSS's financial position.

4 D. Following extensive back and forth discussions and negotiations
5 facilitated by Mr. Railey, counsel for the Parties reached an agreement as to the
6 framework of the proposed settlement and the relief to be made available to the
7 Settlement Class. Only after an agreement in principle was reached with respect to
8 the relief to be afforded to the Settlement Class did the Parties negotiate incentive
9 awards for the proposed Class Representative and the issue of reasonable attorneys'
10 fees for proposed Class Counsel.

11 E. As part of the Parties' agreement, Plaintiff has agreed to file an
12 amended complaint naming Price Self Storage Management, Inc., as the Defendant
13 in place of Price Self Storage Holdings, LLC, concurrently with the filing of this
14 Settlement Agreement.

15 F. At all times, PSS has denied and continues to deny all wrongdoing
16 whatsoever and has denied and continues to deny that it committed, or threatened or
17 attempted to commit, any wrongful act or violation of any law or duty alleged in the
18 Actions. PSS also contends that it has acted properly in all respects in connection
19 with the preparation and sending of all text messages. PSS also denies: (1) each and
20 every claim and contention alleged by Plaintiff; (2) all charges of wrongdoing or
21 liability against it or its agents arising out of any conduct, statements, acts, or
22 omissions alleged in the Action; and (3) that Plaintiff or the Settlement Class are
23 entitled to any form of damages or other relief based on the conduct alleged in the
24 Action.

25 G. PSS also maintains that it has strong, meritorious defenses to the
26 claims alleged in the Action and that it was prepared to vigorously defend all
27 aspects of the Action. Nonetheless, having conducted an investigation of the facts,
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1 analyzed the relevant legal issues and taken into account the uncertainty and risks
2 inherent in any litigation, PSS has concluded that further defense of the Action
3 would be protracted, risky, burdensome and expensive, and that it is desirable and
4 beneficial to it that the Action be fully and finally settled and terminated in the
5 manner and upon the terms and conditions set forth in this Agreement.

6 H. This Agreement, therefore, is a compromise of disputed rights and
7 remedies between the Parties and the Parties acknowledge it represents a fair and
8 reasonable resolution of disputes, claims, and defenses for all concerned. This
9 Agreement, any related documents, and any associated negotiations shall not be
10 construed as, or deemed to be evidence of, or an admission or concession of,
11 liability or wrongdoing on the part of PSS, or any of the Released Parties (defined
12 below), with respect to any claim of any fault, liability, wrongdoing, or damage
13 whatsoever. It is understood and agreed that this Agreement represents a full and
14 final resolution of all claims, at law or in equity, arising out of the subject matter of
15 this Action.

16 I. Plaintiff Mendez believes that the claims asserted in the Action
17 against PSS have merit and that he would have ultimately been successful in
18 certifying the proposed class under Federal Rule of Civil Procedure 23 and in
19 prevailing on the merits at summary judgment or trial. Nonetheless, Plaintiff
20 Mendez and proposed Class Counsel recognize and acknowledge that PSS has
21 raised factual and legal defenses that present a risk that Plaintiff Mendez may not
22 prevail. Plaintiff and proposed Class Counsel also have taken into account the
23 uncertain outcome and risks of any litigation, especially in complex actions, as well
24 as the difficulties and delays inherent in such litigation, including the risk that a
25 judgment would render PSS insolvent. Therefore, Plaintiff believes that it is
26 desirable that the Released Claims be fully and finally compromised, settled and
27 resolved, with prejudice, and barred pursuant to the terms set forth in this
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1 Agreement. Based on their evaluation, proposed Class Counsel have concluded that
 2 the terms and conditions of this Agreement are fair, reasonable, and adequate to the
 3 Settlement Class, and that it is in the best interests of the Settlement Class to settle
 4 the claims raised in the Action pursuant to the terms and provisions of this
 5 Agreement.

6 J. The Parties agree that the Action has been resolved in good faith,
 7 following arm's length bargaining, presided over by a neutral and respected
 8 mediator, and that the settlement reflected in this Agreement confers substantial
 9 benefits upon the Parties, and each of them.

10 K. Accordingly, it is now the intention of the Parties and the objective of
 11 this Agreement to avoid the costs of trial and continued litigation, and to settle and
 12 dispose of, fully and completely and forever, the Released Claims and any and all
 13 claims and causes of action asserted in the Action, subject to final approval of this
 14 Court after a hearing or hearings as provided for below, and that upon final
 15 approval of this Agreement by the Court and fulfillment of each Party's obligations
 16 hereunder, that a final order dismissing this Action with prejudice is to be entered
 17 by the Court.

18 AGREEMENT

19 **1. DEFINITIONS.**

20 In addition to terms defined throughout this Agreement and in any schedule
 21 or exhibit hereto, and under any Law, the following terms shall have the meaning
 22 set forth below and shall be deemed defined, for purposes of this Agreement only,
 23 as follows:

24 **1.1 "Action"** means and refers to this Action, captioned *Mendez v. Price*
 25 *Self Storage Holdings, LLC*, 3:15-cv-02077-AJB-JLB (S.D. Cal.)

26 **1.2 "Approved Claim"** shall mean a Claim that meets all requirements
 27 expressly set forth in this Agreement and approved by the Settlement Administrator
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1 that also meets the following requirements: (a) the Claim is submitted on a timely
2 basis in accordance with the directions on the Claim Form and the provisions of this
3 Agreement; and (b) the Claim is fully and truthfully completed and executed by a
4 Settlement Class Member, with all of the information requested in the Claim Form;
5 (c) the Claim is signed by the Settlement Class Member, physically or
6 electronically, subject to the penalties of perjury; and (d) the Claim is verified by
7 the Settlement Administrator pursuant to Section 5.2 of this Agreement.

8 **1.3 “ATDS”** means an automatic telephone dialing system subject to the
9 provisions of the TCPA.

10 **1.4 “Claim”** means a written claim on the approved “Claim Form,”
11 submitted by a Settlement Class Member to the Settlement Administrator
12 requesting to receive benefits under the terms of this Settlement Agreement.

13 **1.5 “Claims Deadline”** means the date by which all Claim Forms must
14 be postmarked or received to be considered timely, and shall be set as a date no
15 later than thirty (30) days after entry of a Final Order in this Action. The Claims
16 Deadline shall be clearly set forth in the Preliminary Approval Order as well as in
17 the Notice and the Claim Form.

18 **1.6 “Claim Form”** means the document substantially similar to the form
19 attached to this Agreement as Exhibit A, as approved by the Court. The Claim
20 Form, to be completed by Settlement Class Members who wish to file a Claim for a
21 payment pursuant to this Agreement, shall be available in paper format upon
22 request from the Settlement Administrator.

23 **1.7 “Class” and/or “Settlement Class”** means as follows: All Persons in
24 the United States or its territories who at any point from the beginning of time up
25 through the date of this agreement: (a) received at least one text message on his or
26 her cellular telephone from PSS; (b) responded to the text message with the
27 response STOP; and (c) received at least one additional text message from PSS
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1 apart from any message confirming the Person's STOP request.

2 **1.8 "Class Counsel"** means Steven Woodrow and Patrick Peluso of
3 Woodrow & Peluso, LLC and Stefan Coleman of the Law Office of Stefan
4 Coleman, LLC.

5 **1.9 "Class List"** means and refers to the list of cellular telephone
6 numbers and Persons identified by PSS as part of the Settlement Class. PSS
7 represents that it has used best efforts to compile the Class List.

8 **1.10 "Class Member" and "Settlement Class Member"** mean a Person
9 who falls within the definition of the Settlement Class as set forth herein, including
10 the proposed Class Representative, and who has not submitted a valid request for
11 exclusion. Notwithstanding anything to the contrary, there shall be permitted only
12 one Class Member and a single claim for such Class Member for each cellular
13 telephone number called regardless of: (i) the number of owners of such cellular
14 telephone number or device or (ii) the number of times such cellular telephone
15 number was called by PSS. PSS reasonably believes that the total estimated size of
16 the Settlement Class is comprised of approximately 315 Persons to whom text
17 messages were sent after the Person requested STOP.

18 **1.11 "Class Representative"** means and refers to Plaintiff Eric Mendez,
19 subject to the approval of the Court.

20 **1.12 "Court" or "this Court"** means the United States District Court,
21 Southern District of California, the Honorable Anthony Battaglia presiding, or any
22 judge designated to preside over this Action.

23 **1.13 "Defendant" or "PSS"** means Price Self Storage Management, Inc.,
24 and Price Self Storage Holdings, LLC, including each of their respective parents,
25 subsidiaries, affiliates, partners, joint venturers, agents, employees, officers,
26 managers, members and shareholders and owners, and the representatives of each of
27 them.
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1 **1.14 “Effective Date”** means seven (7) calendar days after which all of the
2 events and conditions specified in Paragraph 9.1 have occurred and/or have been
3 met.

4 **1.15 “Fee Award”** means the amount of attorneys’ fees and
5 reimbursement of expenses awarded by this or any other Court to Class Counsel for
6 their work pursuing this Action, if any, which will be paid by the Defendant.

7 **1.16 “Final”** means one business day following the latest of the following
8 events: (i) the date upon which the time expires for filing or noticing any appeal of
9 the Court's Final Order approving this Settlement Agreement; (ii) if there is an
10 appeal or appeals, other than an appeal or appeals solely with respect to the Fee
11 Award, the date of completion, in a manner that finally affirms and leaves in place
12 the Final Order without any material modification, of all proceedings arising out of
13 the appeal or appeals (including, but not limited to, the expiration of all deadlines
14 for motions for reconsideration or petitions for review and/or *certiorari*, all
15 proceedings ordered on remand, and all proceedings arising out of any subsequent
16 appeal or appeals following decisions on remand); or (iii) the date of final dismissal
17 of any appeal or the final dismissal of any proceeding on *certiorari*.

18 **1.17 “Final Approval Hearing”** means the hearing before the Court
19 where the Parties will request the Final Order to be entered by the Court approving
20 the Settlement Agreement, the Fee Award, and the incentive award to the Class
21 Representative.

22 **1.18 “Final Order”** means the Final Order to be entered by the Court
23 approving this class settlement in accordance with this Agreement after the Final
24 Approval Hearing.

25 **1.19 “Nationwide”** means the fifty states of the United States of America
26 and its territories or possessions as may be subject to the TCPA or any claims
27 asserted in the Action.
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1 **1.20 “Notice”** means the notice of this proposed Class Action Settlement
2 and Final Approval Hearing, which is to be delivered via direct mail notice, to be
3 sent to the Settlement Class Members substantially in the manner set forth in this
4 Agreement, consistent with the requirements of due process and FRCP Rule 23 as
5 expressly provided herein, and as substantially in the form attached as Exhibit B.

6 **1.21 “Notice Date”** means the day by which direct mail notice under the
7 Notice Plan set forth in Paragraph 4 has been sent, which shall be a date no later
8 than thirty (30) days after entry of the Preliminary Approval Order.

9 **1.22 “Notice Plan”** means the proposed plan developed by the Settlement
10 Administrator and approved by the Parties for disseminating notice to members of
11 the Settlement Class of the proposed Settlement Agreement and of the Final
12 Approval Hearing.

13 **1.23 “Objection/Exclusion Deadline”** means the date by which a written
14 objection to this Settlement Agreement or a request for exclusion by a Person
15 within the Settlement Class must be postmarked and/or filed with the Court, which
16 shall be designated as a date no earlier than thirty (30) days after the Notice Date
17 and at least fourteen (14) days after papers supporting the Fee Award are filed with
18 the Court and made available on Plaintiff’s Counsel’s firm website,
19 www.woodrowpeluso.com.

20 **1.24 “Parties” or “Settling Parties”** means Plaintiff Eric Mendez, the
21 Settlement Class, and Defendant PSS.

22 **1.25 “Person”** shall mean any individual, and any entity including, without
23 limitation, a corporation, partnership, limited partnership, limited liability
24 partnership, limited liability company, association, joint stock company, estate,
25 legal representative, trust, unincorporated association, and any other business or
26 legal entity and their respective predecessors, successors, representatives, and
27 assigns.
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1 **1.26 “Plaintiff”** means the named Plaintiff, Eric Mendez, and the
2 Settlement Class, collectively.

3 **1.27 “Preliminary Approval”** means the Court's certification of the
4 Settlement Class for settlement purposes, preliminary approval of the Settlement
5 Agreement, and approval of the form of the Notice and of the Notice Plan.

6 **1.28 “Preliminary Approval Order”** means the order preliminarily
7 approving the Settlement Agreement, certifying the Settlement Class for settlement
8 purposes, and directing notice thereof to the Settlement Class, a proposed version
9 which will be submitted to the Court in conjunction with Plaintiff's motion for
10 preliminary approval of the Agreement.

11 **1.29 “PSS’s Counsel”** means defense counsel, Chad Fuller of Troutman
12 Sanders LLP.

13 **1.30 “Released Claims”** means any and all actual, potential, filed, known
14 or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected,
15 claims, demands, liabilities, rights, causes of action, contracts or agreements, extra-
16 contractual claims, punitive, treble, exemplary or multiplied damages, expenses,
17 costs, attorneys’ fees, fines, penalties, awards, interest (including pre-judgment
18 interest), and all other obligations (including “Unknown Claims” as defined below),
19 whether in law or in equity, accrued or unaccrued, direct, individual or
20 representative, of every nature and description whatsoever, whether based on the
21 TCPA or any other federal, state, local, statutory or common law or any other law,
22 rule or regulation, including the law of any jurisdiction outside the United States
23 (including both direct, vicarious, and derivative claims) against the Released
24 Parties, or any of them, relating to, based on, and/or arising out of the facts, claims,
25 causes of action, damages alleged or which could have been alleged in the Action,
26 including any alleged violations of the TCPA or any similar federal, state, local,
27 statutory or common law or any other similar law, rule or regulation.
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1 **1.31 “Released Parties”** means PSS, including any and all of its present or
 2 past heirs, executors, estates, administrators, predecessors, successors, assigns,
 3 parent entities, subsidiaries, associates, affiliates, employers, employees, holding
 4 companies, agents, consultants, independent contractors, insurers, reinsurers,
 5 vendors, directors, managing directors, officers, partners, principals, members,
 6 managers, attorneys, owners, shareholders, legal representatives, or any other
 7 representatives of any of these Persons or entities.

8 **1.32 “Releasing Parties”** means Plaintiff Mendez and those Settlement
 9 Class Members who do not timely opt out of the Settlement Class (whether or not
 10 such Settlement Class Members submit claims), and, to the extent a Settlement
 11 Class Member is not an individual, all of its present, former, and future direct and
 12 indirect parent companies, affiliates, subsidiaries, divisions, agents, franchisees,
 13 successors, predecessors-in-interest, and all of the aforementioned Releasing
 14 Parties’ present, former, and future heirs, executors, administrators, representatives,
 15 agents, attorneys, partners, successors, predecessors-in-interest, and assigns of each
 16 of them.

17 **1.33 “Settlement Administration Expenses”** means the expenses incurred
 18 by the Settlement Administrator in providing Notice, processing claims, mailing
 19 checks for Approved Claims, as well as any costs incurred in sending the Class
 20 Action Fairness Act notices described in Paragraph 4.2(g) below. PSS is to pay all
 21 Settlement Administration Expenses incurred in connection with this Agreement.

22 **1.34 “Settlement Administrator”** means Kurtzman Carson Consultants
 23 (“KCC”) or such other contractor selected by the Parties and approved by the Court
 24 to develop the Notice Plan, oversee the distribution of Notice, and conduct the
 25 processing and payment of Approved Claims to the Settlement Class as set forth in
 26 this Agreement and of any other amounts to any other Persons called for under this
 27 Agreement.
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1 **1.35 “Settlement Agreement” or “Agreement”** means this settlement
2 Agreement.

3 **1.36 “Settlement Fund”** means and refers to a non-segregated amount not
4 to exceed four hundred fifty-thousand dollars (\$450,000.00 USD) that shall be
5 made available to the Settlement Administrator to pay all Approved Claims,
6 Settlement Administration Expenses, the incentive award to the Class
7 Representatives, and the Fee Award, if any. The Settlement Fund represents the
8 limit and extent of PSS’s monetary obligations under this Agreement without regard
9 to the source of such funds. In no event shall Defendant’s total financial liability
10 with respect to this Agreement exceed four hundred fifty-thousand dollars
11 (\$450,000.00 USD). PSS shall not be required to segregate such funds into a
12 separate account nor to make any required set-aside of such amounts. No interest
13 shall accrue on the Settlement Fund. PSS shall be given a credit for any funds
14 advanced by it to the Settlement Administrator or otherwise for funding of the
15 Settlement and shall only be required to provide funds as necessary to the
16 Settlement Administrator to fund Approved Claims or cover other approved charges
17 against the Settlement Fund with sufficient lead time for when due to be disbursed.

18 **1.37 “TCPA”** means the Telephone Consumer Protection Act, 47 U.S.C.
19 §227, *et seq.* and all regulations promulgated thereunder, including 47 C.F.R.
20 §64.1200, *et seq.*

21 **1.38 “Unknown Claims”** means any and all causes of action and claims
22 that could have been filed, asserted, maintained and raised in any pleading, motion
23 or other filing in the Action and that the Plaintiff, the Class Members and the
24 Releasing Parties, or any of them, do not know or suspect to exist, which, if known
25 by such Person might affect such Person’s agreement enter into this Settlement
26 Agreement and release the Released Parties from the Released Claims or might
27 affect such Person’s decision to agree, object, or not object to the settlement under
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the terms of this Agreement. Upon the Effective Date, Plaintiff, the Class Members and the Releasing Parties, shall be deemed to have, and shall have, jointly and severally, voluntarily, knowingly, and expressly irrevocably waived, released and relinquished all such Released Claims to the fullest extent permitted by law, including as to any Class Members subject to California Law the provisions, rights and benefits of Section 1542 of the California Civil Code, or of any other comparable state or federal law, which provides in substantial if not express part, as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MAY HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, Plaintiffs and all other Persons and entities whose claims are being released, also shall be deemed to have, and shall have, waived any and all provision, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Plaintiffs acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Paragraph.

2. SETTLEMENT RELIEF

2.1 Monetary Payments to Settlement Class Members

(a) The Class Members shall have until the Claims Deadline to submit a Claim. Defendant agrees to pay from the Settlement Fund the following to each Class Member who files timely files an Approved Claim:

(i) **Cash Payment:** For Settlement Class Members who elect the

1 “Cash Payment” option on the Claim Form, PSS shall provide a monetary payment,
 2 by check issued from the Settlement Administrator, of \$750.00, regardless of the
 3 total number of text messages the claimant received.

4 (ii) **Certificates:** For Settlement Class Members who elect the
 5 “Certificate” option on the Claim Form, PSS shall provide a Certificate that may be
 6 exchanged for \$1,100.00 worth of storage services. The Certificates shall be
 7 transferable for the first sixty (60) days following their issuance. Certificates must
 8 be redeemed within ninety (90) days of their issuance. Certificates must first be
 9 applied to any outstanding past balances owed to PSS by the redeemer of the
 10 Certificate before being applied to future storage services.

11 (iii) The above Cash Payment and Certificate amounts are subject to
 12 the following possible *pro rata* reduction: if the total amount required to pay \$750
 13 for each Approved Claim for a Cash Payment and \$1,100 for each Approved Claim
 14 for a Certificate would exceed the net amount remaining available for such
 15 payments from the Settlement Fund after payment of: (1) the Settlement
 16 Administration Expenses, (2) the Incentive Award to the Class Representative, (3)
 17 and the Fee Award, if any, then each Settlement Class Member with an Approved
 18 Claim shall receive a *pro rata* reduced amount for such Person’s Approved Claim
 19 as determined by the remaining net balance of the Settlement Fund after payment of
 20 such amounts for Expenses, Incentive Awards, and the Fee Award.

21 (b) Within forty-five (45) days after the Effective Date, or such other date
 22 as the Court may set by order, the Settlement Administrator shall pay from the
 23 Settlement Fund all Approved Claims for Cash Payments by check and all
 24 Approved Claims for Certificates by certificate, and mail them to the Class Member
 25 for such corresponding Approved Claim within the Settlement Class via first-class
 26 mail.

27 (c) All cash payments issued to Settlement Class Members via check will
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1 state on the face of the check that the check will expire and become null and void
 2 unless cashed within ninety (90) days after the date of issuance of such check and
 3 such monies shall remain the property of PSS. To the extent that a check issued to a
 4 Settlement Class Member is not cashed or negotiated within ninety (90) days after
 5 the date of issuance (an "Uncashed Check"), upon a reasonable attempt to re-mail
 6 that Uncashed Check will be deemed void and shall not be reissued, and such funds
 7 applicable to the Uncashed Check shall revert to the Settlement Fund subject to
 8 refund to PSS or its Insurer pursuant to their agreement. In no event will the funds
 9 represented by an Uncashed Check constitute abandoned or unclaimed property,
 10 and PSS is entitled to all such funds. In the event any checks that are mailed
 11 "bounce back," (that is, are returned in the mail as undeliverable) the Settlement
 12 Administrator shall make one attempt at re-mailing the check following attempts to
 13 verify the current address of the Settlement Class Member to whom the bounced
 14 back check was mailed.

15 **2.2 Prospective Relief:** PSS further agrees it shall affirmatively use
 16 commercially reasonable efforts to, on or before the Effective Date, and continuing
 17 for a period of six months (6) months from the Effective Date, honor all STOP
 18 requests received by Persons to whom it sends text messages.

19 **3. RELEASES**

20 **3.1** The obligations incurred pursuant to this Settlement Agreement shall
 21 constitute a full and final disposition, settlement, and dismissal of the Actions and
 22 any and all Released Claims by the Releasing Parties against all Released Parties.

23 **3.2** Upon the Effective Date, the Releasing Parties, and each of them,
 24 jointly and severally, shall be deemed to have, and by operation of the Final Order
 25 shall have fully, finally, and forever released, relinquished, and discharged all
 26 Released Claims against the Released Parties, and each of them.

27 **3.3** In addition to the foregoing, upon the Effective Date the Class
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Representative, on behalf of himself and his present, former, and future heirs, executors, administrators, representatives, agents, attorneys, partners, Successors, predecessors-in-interest, and assigns of each of them, shall be deemed to have released any and all claims against PSS and the Released Parties that were or could have been brought against PSS and the Released Parties either in the Action or in any separate proceeding in any court of competent jurisdiction. PSS shall be able to raise a defense in any subsequent action alleging Released Claims that payments to any Person based on an Approved Claim operates as an accord and satisfaction as to any claims such Persons may otherwise have arising from, or which could have been asserted in, the Actions.

4. NOTICE TO THE CLASS

4.1 Upon entry of the Preliminary Approval Order, the Settlement Administrator shall cause the Notice, describing the Final Approval Hearing and the terms of this Settlement Agreement, and the Claim Form to be disseminated to the Class Members as provided in this Agreement. Such notice shall comport with due process and FRCP Rule 23, and be effectuated pursuant to the Notice Plan, the costs of which shall be Settlement Administration Expenses.

4.2 The Notice Plan, developed by the Settlement Administrator with the assistance of the Parties, shall include:

(a) *Class List.* The Parties agree that within seven (7) days following the entry of the Preliminary Approval, the Settlement Administrator shall be provided with a copy of the Class List, as updated by PSS, to include any known cellular telephone numbers and the names of the believed owner of the device/number, and his or her last known US mailing address for purposes of direct mailing of Notice to such Persons. The Settlement Administrator shall thereafter update the Class List as appropriate using the national change of address registry and/or any necessary and appropriate reverse look-up methods as to those numbers for which

1 an address cannot be determined. The Parties, Class Counsel, PSS's counsel, and
 2 the Settlement Administrator shall keep the Class List (and all personal
 3 information obtained therefrom, including the identity and telephone numbers for
 4 the persons comprising the Settlement Class) confidential.

5 **(b)** *Direct Notice by Mail.* No later than thirty (30) days after the entry of
 6 the Preliminary Approval Order or on such other date determined by the Court, the
 7 Settlement Administrator shall send Notice substantially in the form attached as
 8 Exhibit B, together with a Claim Form (attached as Exhibit A), by first class mail to
 9 each physical address on the Class List as updated using the national change of
 10 address registry.

11 **(c)** *CAFA Notice.* Pursuant to 28 U.S.C. § 1715, not later than ten (10)
 12 days after the Agreement is filed with the Court, the Settlement Administrator shall
 13 cause to be served upon the Attorneys General of each U.S. State, the Attorney
 14 General of the United States, and other required government officials, notice of the
 15 proposed settlement, which shall include (1) a copy of the most recent Complaint
 16 and all materials filed with the complaint in the Action or notice of how to
 17 electronically access such materials; (2) notice of all scheduled judicial hearings in
 18 the Action; (3) all proposed forms of Notice; and (4) a copy of this Agreement. The
 19 Settlement Administrator shall serve upon the above-referenced government
 20 officials the names of class members who reside in each respective state and the
 21 share of the claims of such members to the entire settlement, or if not feasible, a
 22 reasonable estimate of the number of class members residing in each state and the
 23 estimated proportionate share of the claims of such members to the entire
 24 Agreement.

25 **4.3** The Notice shall advise the Settlement Class Members of their rights,
 26 including the right to be excluded from, comment upon, and/or object to the
 27 Settlement Agreement or its terms. The Notice shall specify that: (a) any objection
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1 to the Settlement Agreement, and any papers submitted in support of said objection,
 2 shall be considered by the Court at the Final Approval Hearing only if, on or before
 3 the Objection/Exclusion Deadline approved by the Court and specified in the
 4 Notice, the Person making an objection files notice of his or her intention to do so
 5 and at the same time files copies of such papers he or she proposes to submit at the
 6 Final Approval Hearing with the Clerk of the Court and sends copies of such papers
 7 mail, hand, or overnight delivery service to Class Counsel and PSS's Counsel, and
 8 (b) that any objection made by a Settlement Class Member represented by counsel
 9 must be filed through the Court's CM/ECF system.

10 **4.4** Any member of the Settlement Class who intends to object to this
 11 Agreement must include in the objection his/her name and address, include all
 12 arguments, citations, and evidence supporting the objection (including copies of any
 13 documents relied on), state that he or she is a Class Member, provide the cellular
 14 phone number that received the text messages, and provide a statement indicating
 15 whether the objector intends to appear at the Final Approval Hearing and, if so,
 16 whether the appearance will be with or without counsel. Any Settlement Class
 17 Member who fails to timely file a written objection with the Court and notice of his
 18 or her intent to appear at the Final Approval Hearing in accordance with the terms
 19 of this paragraph and as detailed in this Notice, and at the same time provide copies
 20 to designated counsel for the Parties, shall not be permitted to object to this
 21 Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any
 22 review of this Agreement by appeal or other means and shall be deemed to have
 23 waived his, her, or its objections and be forever barred from making any such
 24 objections in the Action or any other action or proceeding. To be valid, the
 25 objection must be filed with the Court and delivered or postmarked and sent via
 26 mail to Class Counsel and PSS's Counsel on or before the Objection/Exclusion
 27 Deadline approved by the Court and specified in the Notice.
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1 **4.5** A member of the Settlement Class may request to be excluded from
 2 the Settlement Class in writing by a request postmarked on or before the
 3 Objection/Exclusion Deadline approved by the Court and specified on the Notice.
 4 To exercise the right to be excluded, a member of the Settlement Class must timely
 5 send a written request for exclusion to the Settlement Administrator providing
 6 his/her name and address, the cellular phone number that received the text
 7 messages, the name and number of the case, and a statement that such Person
 8 intends to be excluded from the Settlement. A request to be excluded that does not
 9 include all of this information, or that is sent to an address other than that
 10 designated in the Notice, or that is not postmarked within the time specified, shall
 11 be invalid, and the Person(s) serving such a request shall be a member(s) of the
 12 Settlement Class and shall be bound as Settlement Class Members by the
 13 Agreement, if approved. Any Settlement Class Member who elects to be excluded
 14 shall not: (i) be bound by any orders of the Final Order; (ii) be entitled to relief
 15 under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement;
 16 or (iv) be entitled to object to any aspect of this Agreement. The request for
 17 exclusion must be personally signed by the Person requesting exclusion. So-called
 18 “mass” or “class” opt-outs shall not be allowed.

19 **4.6** *Costs of Notice and Settlement Administration.* Defendant shall be
 20 responsible for all costs of Notice and Settlement Administration.

21 **5. SETTLEMENT ADMINISTRATION**

22 **5.1** The Settlement Administrator shall, under the Court’s supervision,
 23 administer the relief provided by this Settlement Agreement by processing Claim
 24 Forms in a rational, responsive, cost-effective, and timely manner. The Settlement
 25 Administrator shall maintain reasonably detailed records of its activities under this
 26 Agreement. The Settlement Administrator shall ensure that all such records will be
 27 made available for inspection and copying to Class Counsel and PSS’s Counsel
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1 upon request. The Settlement Administrator shall also provide reports and other
2 information to the Court as the Court may require. The Settlement Administrator
3 shall provide Class Counsel and PSS's Counsel with information concerning
4 Notice, administration, and implementation of the Settlement Agreement. Should
5 the Court request, the Parties, in conjunction with the Settlement Administrator,
6 shall submit a timely report to the Court summarizing the work performed by the
7 Settlement Administrator, including a report of all amounts from the Settlement
8 Fund paid to Settlement Class Members on account of Approved Claims. Without
9 limiting the foregoing, the Settlement Administrator shall:

10 **(a)** Forward to PSS's Counsel and Class Counsel, all original (or suitable
11 copies of) documents and other materials received in connection with the
12 administration of the Settlement, within fifteen (15) days after the date on which
13 all Claim Forms have been finally approved or disallowed in accordance with the
14 terms of this Agreement;

15 **(b)** Receive requests to be excluded from the Settlement Class and other
16 requests from Settlement Class Members and promptly provide to Class Counsel
17 and PSS's Counsel copies thereof upon receipt. If the Settlement Administrator
18 receives any requests for exclusion or other requests from Settlement Class
19 Members after the deadline for the submission of such forms and requests, the
20 Settlement Administrator shall promptly provide copies thereof to Class Counsel
21 and PSS's Counsel.

22 **(c)** Provide weekly or other periodic reports to Class Counsel and PSS's
23 Counsel, including without limitation, reports regarding the number of Claim Forms
24 received and the amount of the payments sought, the number thereof approved by
25 the Settlement Administrator, and the categorization and description of Claim
26 Forms rejected, in whole or in part, by the Settlement Administrator; and

27 **(d)** Make available for inspection and copying by Class Counsel and/or
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1 PSS's Counsel, the Claim Forms and any supporting documentation received by the
2 Settlement Administrator at any time upon reasonable notice.

3 **5.2** The Settlement Administrator shall reject a Claim Form, or any part of
4 a Claim for a payment reflected therein with due regard for PSS records to verify
5 the submissions of any claim presented, including without limitation, where the
6 name and telephone number provided on the Claim Form does not appear on the
7 Class List; cannot be validated as having been sent a text message by PSS; or the
8 Person submitting the claim is not the owner of the cellular number at which the
9 call(s) was received as required under the TCPA. In addition, the Settlement
10 Administrator shall be obliged to employ reasonable procedures to screen claims for
11 abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud.
12 The Settlement Administrator shall determine whether a Claim Form submitted by a
13 Settlement Class Member is an Approved Claim and shall reject Claim Forms that
14 fail to comply with the instructions thereon or the terms of this Agreement, after
15 giving the claimant a reasonable opportunity to provide any requested missing
16 information, but in no event shall any Settlement Class Member have more than
17 thirty (30) days after being noticed by the Settlement Administrator of any question
18 or deficiency in the submitted Claim Form to answer the question or cure such
19 deficiency.

20 **5.3** Both Class Counsel and/or PSS's Counsel either individually or
21 jointly shall have the right to challenge the acceptance or rejection of a Claim Form
22 submitted by a Settlement Class Member. The Settlement Administrator shall be
23 bound by any agreed decisions of Class Counsel and PSS's Counsel as to the
24 validity of any disputed Claim Form. To the extent Class Counsel and PSS's
25 Counsel are not able to agree on the disposition of a challenge, the Parties shall
26 present such challenge to the mediator, the Honorable Matthew Railey, for binding,
27 non-appealable decision as to such challenge, subject to any confidentiality
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1 provisions as necessary to assure the privacy of the person whose claim is
2 challenged.

3 **5.4** In the exercise of their duties outlined in this Agreement, the
4 Settlement Administrator shall have the right to reasonably request additional
5 information from the Parties or any Settlement Class Member.

6 **5.5** The Final Approval Hearing shall be no earlier than forty-five (45)
7 days after the Notice described in paragraph 4.2(g) is provided or such other time as
8 the Court shall set.

9 **5.6** Any Settlement Class Member who does not, in accordance with the
10 terms and conditions of this Agreement, seek timely exclusion from the Settlement
11 Class or timely file a valid Claim Form shall be deemed a Class Member bound by
12 this Agreement but shall not be entitled to receive any cash award or any other
13 benefits pursuant to this Agreement, but will otherwise be bound together with all
14 respective Settlement Class Members by all of the terms of this Agreement,
15 including the terms of the Final Order to be entered in the Action and Releases
16 provided for in the Agreement, and will be barred from bringing any action against
17 any of the Released Parties concerning the Released Claims.

18 **5.7** The Settlement Administrator and the Parties each agree to keep all
19 information received pursuant to Paragraph 5 of this Agreement—including the
20 Class List and all personal information of the Settlement Class obtained
21 therefrom—confidential and may use it only for purposes of effectuating this
22 Agreement.

23 **6. TERMINATION OF SETTLEMENT**

24 **6.1** Subject to Paragraph 9 below, the Class Representative, on behalf of
25 the Settlement Class, or Defendant and each or any of them, shall have the right to
26 terminate this Agreement by providing written notice of the election to do so
27 (“Termination Notice”) to all other Parties within ten (10) business days of any of
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1 the following events: (i) the Court's refusal to grant Preliminary Approval of this
 2 Agreement in any material respect; (ii) the Court's refusal to grant final approval of
 3 this Agreement in any material respect; (iii) the Court's refusal to enter the Final
 4 Order in this Action in any material respect; (iv) the date upon which the Final
 5 Order is modified or reversed in any material respect by the Court of Appeals or the
 6 Supreme Court; or (v) the date upon which the Alternate Order, as defined in
 7 Paragraph 9.1(d) of this Agreement, is modified or reversed in any material respect
 8 by the Court of Appeals or the Supreme Court.

9 **6.2** Notwithstanding any other provision contained herein to the contrary,
 10 Defendant shall have the right, but not the obligation, to terminate this Agreement if
 11 over twenty 20% of the Settlement Class files valid requests for exclusion from this
 12 Agreement. To exercise this right, Defendant must provide written notice to
 13 Plaintiff no later than fourteen (14) days following the Objection/Exclusion
 14 Deadline.

15 **7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL** 16 **ORDER**

17 **7.1** Promptly after the execution of this Settlement Agreement, Class
 18 Counsel shall submit this Agreement together with its Exhibits to the Court and
 19 shall move the Court for Preliminary Approval of the settlement set forth in this
 20 Agreement, certification of the Settlement Class for settlement purposes only,
 21 appointment of Class Counsel and the Class Representatives, and entry of a
 22 Preliminary Approval Order, which order shall set a Final Approval Hearing date,
 23 the Objection/Exclusion deadline, the Claims Deadline, and approve the Notice and
 24 Claim Form for dissemination in accordance with the Notice Plan, substantially in
 25 the forms attached as Exhibits A and B.

26 **7.2** At the time of the submission of this Agreement to the Court as
 27 described above, Class Counsel and PSS's Counsel shall request that, after Notice is
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1 given, the Court hold a Final Approval Hearing and approve the settlement of the
2 Action as set forth in this Agreement.

3 **7.3** After Notice is given, the Parties shall request from the Court a Final
4 Order. The Final Order will (among other things):

5 **(a)** find that the Court has personal jurisdiction over all Settlement Class
6 Members and that the Court has subject matter jurisdiction to approve the
7 Agreement, including all attached exhibits;

8 **(b)** approve the Agreement and the proposed settlement as fair,
9 reasonable and adequate as to, and in the best interests of, the Settlement Class
10 Members; direct the Parties and their counsel to implement and consummate the
11 Agreement according to its terms and provisions; and declare the Agreement to be
12 binding on, and have *res judicata* and preclusive effect in all pending and future
13 lawsuits or other proceedings maintained by or on behalf of Plaintiffs and the
14 Releasing Parties;

15 **(c)** find that the Notice and the Notice Plan implemented pursuant to the
16 Agreement (1) constitute the best practicable notice under the circumstances; (2)
17 constitute notice that is reasonably calculated, under the circumstances, to apprise
18 the Settlement Class of the pendency of the Action, their right to object or exclude
19 themselves from the proposed Agreement, and to appear at the Final Approval
20 Hearing; (3) are reasonable and constitute due, adequate, and sufficient notice to all
21 persons entitled to receive notice; and (4) meet all applicable requirements of the
22 Federal Rules of Civil procedure, the Due Process Clause of the United States
23 Constitution, and the rules of the Court;

24 **(d)** find that the Class Representative and Class Counsel adequately
25 represented the Settlement Class for purposes of entering into and implementing the
26 Agreement;

27 **(e)** dismiss this Action (including all individual claims and class action
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claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

(f) incorporate the Release set forth above, make the Release effective as of the Effective Date, and forever discharge the Released Parties as set forth in this Agreement;

(g) permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the Settlement Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based on the Released Claims;

(h) authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) as (1) shall be consistent in all material respects with the Final Order, or (b) do not limit the rights of Settlement Class Members; and without affecting the finality of the Final Order for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Order, and for any other necessary purpose; and

(i) incorporate any other provisions, as the Court deems necessary and just.

8. CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES; INCENTIVE AWARD.

8.1 Subject to the Court's approval, the Parties have agreed that out of the Settlement Fund, Class Counsel shall be paid the sum of one hundred thousand dollars (\$100,000 USD) for reasonable attorneys' fees and expenses in these Actions, which represents twenty percent (22.23%) of the Settlement Fund established by the Agreement. Defendant agrees that such an amount is reasonable

1 and will not object to, or otherwise challenge directly or indirectly, Class Counsel's
2 application for attorneys' fees and for reimbursement of costs and other expenses if
3 Class Counsel's application does not exceed said amount. Class Counsel has, in
4 turn, agreed not to seek more than this amount from the Court.

5 **8.2** Class Counsel shall, within fourteen (14) days following the Effective
6 Date, be paid the amount of attorneys' fees and expenses approved by the Court.
7 Any payment of the Fee Award from the Settlement Fund shall be paid by the
8 Settlement Administrator via electronic transfer to an account designated by Class
9 Counsel providing necessary information to the Settlement Administrator. Class
10 Counsel agree that in no event shall Defendant collectively pay or be obligated to
11 pay in excess of \$100,000 for Class Counsel's attorneys' fees and expenses.
12 Defendant shall timely ensure that the Settlement Administrator has cleared funds
13 necessary to pay the Fee Award approved by the Court.

14 **8.3** In addition to any Approved Claim payment to which he may be
15 entitled to under the Settlement Agreement, and provided that he does so qualify for
16 an Approved Claim, in recognition of his efforts on behalf of the Settlement Class,
17 the Class Representative shall, subject to the approval of the Court, be awarded an
18 incentive award in the aggregate amount of three thousand dollars (\$3,000). PSS
19 agrees that such an amount is reasonable and that it shall not oppose such award,
20 directly or indirectly. This sum shall be paid in recognition of the Plaintiff's time,
21 exposure, and effort serving as the Class Representative in this litigation. The
22 Settlement Administrator shall pay said amount via check from the Settlement Fund
23 to the Class Representative, such check to be sent care of Class Counsel, within ten
24 (10) days after the date the Court enters the Final Order if there have been no
25 objections to the Settlement Agreement, and, if there have been such objections,
26 within fourteen (14) days after the Effective Date.

1 **9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL,**
 2 **CANCELLATION, OR TERMINATION**

3 **9.1** The Effective Date of this Settlement Agreement shall not occur
 4 unless and until each of the following events occurs and shall be the date upon
 5 which the last (in time) of the following events occurs:

- 6 (a) This Agreement has been signed by Class Counsel, the Named
 7 Plaintiff, PSS and PSS's Counsel;
 8 (b) The Court has entered the Preliminary Approval Order;
 9 (c) The Court has entered an order finally approving the Agreement,
 10 following notice to the Settlement Class and a Final Approval Hearing, as provided
 11 in the Federal Rules of Civil Procedure, and has entered the Final Order, or an order
 12 substantially consistent with this Agreement; and
 13 (d) The Final Order has become Final, as defined above, or, in the event
 14 that the Court enters a final order in a form other than that provided above
 15 ("Alternate Order") and that has the consent of the Parties, such Alternate Order
 16 becomes Final.

17 **9.2** If some or all of the conditions specified in Paragraph 9.1 are not met,
 18 or in the event that this Agreement is not approved by the Court, or the settlement
 19 set forth in this Agreement is terminated or fails to become effective in accordance
 20 with its terms, then this Agreement shall be canceled and terminated subject to
 21 Paragraph 9.3 unless the Plaintiff and Defendant mutually agree in writing to
 22 proceed with the Agreement. If any party to this Agreement is in material breach of
 23 the terms of this Agreement, any other party, provided that it is in substantial
 24 compliance with the terms of the Agreement, may terminate this Agreement on
 25 notice to all of the Settling Parties. Notwithstanding anything in this Agreement, the
 26 Parties agree that the Court's failure to approve, in whole or in part, the attorneys'
 27 fees payment to Class Counsel set forth in Paragraphs 8.1 and 8.2 above shall not
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1 prevent the Agreement from becoming effective, nor shall it be grounds for
2 termination.

3 **9.3** If this Agreement is terminated or fails to become effective for the
4 reasons set forth in Paragraphs 6.1, 6.2, 9.1 or 9.2 above, the Parties shall be
5 restored to their respective positions in the Action as of the date of the signing of
6 this Agreement with all claims or their defenses fully preserved. In such event, any
7 Final Order or other order entered by the Court in accordance with the terms of this
8 Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be
9 returned to the *status quo ante* with respect to the Action as if they had never
10 entered into this Agreement, subject to reasonable extensions of time as to any then-
11 pending discovery or other deadlines and any trial dates for the Actions.

12 **10. MISCELLANEOUS PROVISIONS**

13 **10.1** The Parties (a) acknowledge that it is their intent to consummate this
14 Settlement Agreement; and (b) agree, subject to their fiduciary and other legal
15 obligations, to cooperate to the extent reasonably necessary to effectuate and
16 implement all terms and conditions of this Agreement and to exercise their
17 reasonable best efforts to accomplish the foregoing terms and conditions of this
18 Agreement. The Parties, Class Counsel, and PSS's Counsel all agree to cooperate
19 with one another in seeking Court approval of the Preliminary Approval order, the
20 Settlement Agreement, and the Final Order, and promptly to agree upon and
21 execute all such other documentation as may be reasonably required to obtain final
22 approval of the Agreement.

23 **10.2** The Parties intend this Settlement Agreement to be a final and
24 complete resolution of all disputes between them with respect to the Released
25 Claims by the Releasing Parties and each or any of them, on the one hand, against
26 the Released Parties, and each or any of them, on the other hand. Accordingly, the
27 Parties agree not to assert in any forum that the Actions were brought by Plaintiff or
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1 defended by Defendant, or each or any of them, in bad faith or without a reasonable
2 basis.

3 **10.3** The Parties have relied upon the advice and representation of counsel,
4 selected by them, concerning their respective legal liability for the claims hereby
5 released. The Parties have read and understand fully this Agreement and have been
6 fully advised as to the legal effect thereof by counsel of their own selection and
7 intend to be legally bound by the same.

8 **10.4** Whether or not the Effective Date occurs or the Settlement Agreement
9 is terminated, neither this Agreement nor the settlement contained in this
10 Agreement, nor any act performed or document executed pursuant to or in
11 furtherance of this Agreement or the settlement:

12 **(a)** is, may be deemed, or shall be used, offered or received against the
13 Released Parties, or each or any of them, as an admission, concession, or evidence
14 of, the validity of any Released Claims, the truth of any fact alleged by the
15 Plaintiffs, the deficiency of any defense that has been or could have been asserted in
16 the Action, the violation of any law or statute, the reasonableness of the settlement
17 amount or the fee award, or of any alleged wrongdoing, liability, negligence or fault
18 of the Released Parties, or any of them;

19 **(b)** is, may be deemed, or shall be used, offered, or received against the
20 Settlement Class as an admission, concession, or evidence of any fault,
21 misrepresentation, or omission with respect to any statement or written document
22 approved or made by the Released Parties, or any of them;

23 **(c)** is, may be deemed, or shall be used, offered, or received against the
24 Released Parties, or each or any of them, as an admission or concession with respect
25 to any liability, negligence, fault or wrongdoing as against any Released Parties, in
26 any civil, criminal, or administrative proceeding in any court, administrative agency,
27 or other tribunal. However, the settlement, this Agreement, and any acts performed
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1 and/or documents executed in furtherance of or pursuant to this Agreement and/or
 2 Settlement may be used in any proceedings as may be necessary to effectuate the
 3 provisions of this Agreement. If this Settlement Agreement is approved by the
 4 Court, any of the Parties or any of the Released Parties may file this Agreement
 5 and/or the Final Order in any action that may be brought against such Party or
 6 Parties in order to support a defense or counterclaim based on principles of *res*
 7 *judicata*, collateral estoppel, release, good faith settlement, judgment bar or
 8 reduction, or any other theory of claim preclusion or issue preclusion or similar
 9 defense or counterclaim;

10 (d) is, may be deemed, or shall be construed against Plaintiffs, the
 11 Settlement Class or each or any of them, or against the Released Parties, or each or
 12 any of them, as an admission or concession that the consideration to be given
 13 hereunder represents an amount equal to, less than, or greater than that amount that
 14 could have or would have been recovered after trial; and

15 (e) is, may be deemed, or shall be construed as or received in evidence as
 16 an admission or concession against Plaintiffs, the Settlement Class, or each and any
 17 of them, or against the Released Parties, or each or any of them, that any of
 18 Plaintiffs' claims are with or without merit or that damages recoverable in the Action
 19 would have exceeded or would have been less than any particular amount.

20 **10.5** The headings used in this Agreement are used for the purpose of
 21 convenience only and are not meant to have legal effect.

22 **10.6** The waiver by one Party of any breach of this Agreement by any other
 23 Party shall not be deemed as a waiver of any other prior or subsequent breaches of
 24 this Agreement.

25 **10.7** All of the Recitals and Exhibits to this Agreement are material and
 26 integral parts of it and are fully incorporated into this Agreement by this reference.

27 **10.8** This Agreement and its Exhibits set forth the entire agreement and
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1 understanding of the Parties with respect to the matter set forth herein, and
2 supersede all prior negotiations, agreements, arrangements, and undertakings with
3 respect to the matters set forth herein. No representations, warranties, or
4 inducements have been made to any Party concerning this Settlement Agreement or
5 its Exhibits other than the representations, warranties, and covenants contained and
6 memorialized in such documents. This Agreement may be amended or modified
7 only by a written instrument signed by or on behalf of all Parties or their respective
8 successors-in-interest.

9 **10.9** Except as otherwise provided in this Agreement, each Party shall bear
10 its own attorney's fees and costs.

11 **10.10** All Parties represent and warrant that they have not assigned any
12 claim or right or interest therein as against the Released Parties to any other Person
13 or Party and that they are fully entitled to release the same.

14 **10.11** Each counsel or other Person executing this Settlement Agreement,
15 any of its Exhibits, or any related settlement documents on behalf of any Party to
16 this Agreement warrants and represents that such Person has the full authority to do
17 so and has the authority to take appropriate action required or permitted to be taken
18 pursuant to the Agreement to effectuate its terms.

19 **10.12** This Agreement may be executed in one or more counterparts. All
20 executed counterparts and each of them shall be deemed to be one and the same
21 instrument provided that counsel for the Parties to this Agreement all exchange
22 original signed counterparts. A complete set of original executed counterparts shall
23 be filed with the Court if the Court so requests.

24 **10.13** This Settlement Agreement shall be binding on, and inure to the
25 benefit of, the successors and assigns of the Parties to this Agreement and the
26 Released Parties.

27 **10.14** This Court shall retain jurisdiction with respect to implementation and
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1 enforcement of the terms of this Agreement, and all Parties to this Agreement
2 submit to the jurisdiction of the Court for purposes of implementing and enforcing
3 the settlement embodied in this Agreement.

4 **10.15** All proceedings in the Actions shall be stayed and abated following
5 entry of the Preliminary Approval Order, except as may be necessary to implement
6 the Settlement Agreement or comply with the terms of the Settlement. Pending
7 determination of whether the Settlement Agreement should be granted final
8 approval, the Parties in the Actions agree not to pursue any claims or defenses
9 otherwise available to them.

10 **10.16** Whether or not the Settlement Agreement is signed or otherwise
11 approved or if this Settlement Agreement is terminated, neither this Settlement
12 Agreement nor the settlement contained herein, nor any act performed or document
13 executed pursuant to or in furtherance of this Agreement or the settlement may be
14 deemed, or shall be used, offered or received against the Released Parties, or each
15 or any of them, as an admission, concession or evidence of, the validity of any
16 Released Claims, the truth of any fact alleged by the Plaintiff, the deficiency of any
17 defense that has been or could have been asserted in the Action, the violation of any
18 law or statute, the reasonableness of the settlement amount or the fee award, or of
19 any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or
20 any of them. Additionally, neither the Settlement, nor any act performed or
21 document executed pursuant to or in furtherance of the Settlement, is or may be
22 deemed a waiver of PSS's right to challenge class certification if this Settlement for
23 any reason does not become Final.

24 **10.17** This Settlement Agreement shall be governed by and construed in
25 accordance with the laws of the State of California.

26 **10.18** This Agreement is deemed to have been prepared by counsel for all
27 Parties, as a result of arm's length negotiations among the Parties with the aid of a
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1 neutral mediator. Whereas all Parties have contributed substantially and materially
 2 to the preparation of this Agreement, it shall not be construed more strictly against
 3 one Party than another.


4 **10.19** Where this Agreement requires notice to the Parties, such notice shall
 5 be sent to the undersigned counsel by email to their designated accounts in the
 6 Actions, certified mail in care of the United States Postal Service (USPS) or by
 7 overnight mail in care of the USPS or such recognized commercial carrier as
 8 Federal Express, UPS or the like with proof of delivery:

9 **(a)** For Plaintiffs: Steven L. Woodrow, Patrick H. Peluso, Woodrow &
 10 Peluso, LLC, 3900 East Mexico Avenue, Suite 300, Denver, Colorado 80210,
 11 swoodrow@woodrowpeluso.com, ppeluso@woodrowpeluso.com; and

12 **(b)** For PSS: Chad R. Fuller and Virginia Flynn, TROUTMAN
 13 SANDERS LLP, 11682 El Camino Real, Suite 400 San Diego, CA 92130-2092
 14 chad.fuller@troutmansanders.com.

15 **AGREED:**

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 17
 18 Dated: February 16, 2016

19 By: 
 20 Eric Mendez, individually and on
 21 behalf of the Class

22 Dated: February __, 2016

23 By: _____
 24 On behalf of Price Self Storage
 25 Management Inc.

26 **APPROVED AS TO FORM:**

27 Dated: February __, 2016

28 By: _____
 Steven L. Woodrow
 Woodrow & Peluso, LLC
 3900 East Mexico Ave., Ste. 300
 Denver, CO 80210

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Counsel for Plaintiff and the Class

Dated: February ___, 2016

By:_____

Chad R. Fuller
Troutman Sanders LLP
11682 El Camino Real, Ste. 400
San Diego, CA 92130

Counsel for Price Self Storage

1 neutral mediator. Whereas all Parties have contributed substantially and materially
 2 to the preparation of this Agreement, it shall not be construed more strictly against
 3 one Party than another.


4 **10.19** Where this Agreement requires notice to the Parties, such notice shall
 5 be sent to the undersigned counsel by email to their designated accounts in the
 6 Actions, certified mail in care of the United States Postal Service (USPS) or by
 7 overnight mail in care of the USPS or such recognized commercial carrier as
 8 Federal Express, UPS or the like with proof of delivery:

9 (a) For Plaintiffs: Steven L. Woodrow, Patrick H. Peluso, Woodrow &
 10 Peluso, LLC, 3900 East Mexico Avenue, Suite 300, Denver, Colorado 80210,
 11 swoodrow@woodrowpeluso.com, ppeluso@woodrowpeluso.com; and

12 (b) For PSS: Chad R. Fuller and Virginia Flynn, TROUTMAN
 13 SANDERS LLP, 11682 El Camino Real, Suite 400 San Diego, CA 92130-2092
 14 chad.fuller@troutmansanders.com.

15 **AGREED:**

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 18 Dated: February 16, 2016

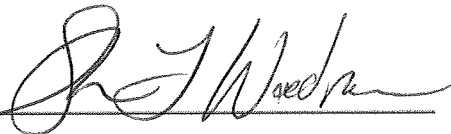
By: 
 Eric Mendez, individually and on
 behalf of the Class

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 20
 21 Dated: February __, 2016

By: _____
 On behalf of Price Self Storage
 Management Inc.

22
 23
 24 **APPROVED AS TO FORM:**

25 Dated: February 29, 2016

By: 
 Steven L. Woodrow
 Woodrow & Peluso, LLC
 3900 East Mexico Ave., Ste. 300
 Denver, CO 80210

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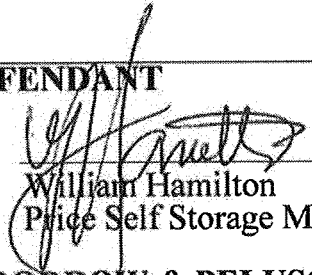
Dated: February ____, 2016

PLAINTIFF

By: _____
Eric Mendez

Dated: February 23, 2016

DEFENDANT

By:  _____
William Hamilton
Price Self Storage Management, Inc.

Dated: February ____, 2016

WOODROW & PELUSO, LLC

By: _____
Steven L. Woodrow
Patrick H. Peluso

Attorneys for Plaintiff
ERIC MENDEZ

Dated: February ____, 2016

LOZEAU DRURY LLP

By: _____
Michael Lozeau
Rebecca Davis

Attorneys for Plaintiff
ERIC MENDEZ

Dated: February ____, 2016

TROUTMAN SANDERS LLP

By: _____
Chad R. Fuller
Virginia Bell Flynn
Attorneys for Defendant
Price Self Storage Management, Inc.

EXHIBIT A

CLAIM FORMS MUST BE POSTMARKED NO LATER THAN [Claims Deadline] TO BE ELIGIBLE FOR PAYMENT. MAIL THIS CLAIM FORM TO: Claims Administrator, [Address]. If you have questions, you may call the Settlement Administrator at [toll-free #] Class Counsel at 1-720-213-0675.

EXHIBIT B

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

If You Received a Text Message on Your Cellular Telephone from Price Self Storage Management, Inc., (“PSS”) You Could Get a Payment from a Class Action Settlement.

A Federal Court authorized this notice. This is not a solicitation from a lawyer.

- A Settlement has been reached in a putative class action lawsuit about whether PSS sent text messages to cellphone users after the users had replied “STOP” (other than a text message confirming the STOP request). PSS is referred to as the “Defendant.”
- Those included in the Settlement will be eligible to receive either a payment of up to \$750 or a certificate for \$1,100 in storage services (the actual amount, if any, of the payments will be based on the number of valid claim forms submitted, administrative costs, and any incentive award or attorneys fees and expenses approved by the Court).
- Please read this notice carefully. Your legal rights are affected whether you act, or don’t act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	This is the only way to receive a payment of up to \$750 or a certificate for up to \$1,100 in storage services (certificates must first be used to satisfy any outstanding balance).
EXCLUDE YOURSELF	You will receive no benefits, but you will retain any rights you currently have to sue the Defendant about the claims in this case.
OBJECT	Write to the Court explaining why you don’t like the Settlement.
GO TO THE HEARING	Ask to speak in Court about your opinion of the Settlement.
DO NOTHING	You won’t get a share of the Settlement benefits and will give up your rights to sue the Defendant about the claims in this case.

These rights and options – **and the deadlines to exercise them** – are explained in this Notice

BASIC INFORMATION

1. Why was this Notice issued?

A Court authorized this notice because you have a right to know about a proposed Settlement of this class action lawsuit and about all of your options, before the Court decides whether to give final approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

Judge Anthony J. Battaglia of the U.S. District Court for the Southern District of California is overseeing this case. The case is known as *Mendez v. Price Self Storage, Management Inc.* (“PSS”) 3:15-cv-02077-AJB-JLB. Mr. Mendez, the person who sued, is called the Plaintiff/Class Representative. The Defendant is PSS.

2. What is a Class Action?

In a class action, one or more named plaintiffs called Class Representatives (in this case, Eric Mendez) sues on behalf of a group or a “class” of people who have similar claims. In a class action, the court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

3. What is this Lawsuit about?

This lawsuit alleges that PSS sent text messages to cellphones in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227. The Class Representative claims that PSS sent text messages to cellphone users who had responded “STOP” to prior messages, and that the subsequent messages went beyond merely confirming the STOP request. PSS denies that it violated any law and asserts several defenses.

The Court has not determined who is right. Rather, the Parties have agreed to settle the lawsuit to avoid the uncertainties and expenses associated with ongoing litigation.

4. Why is there a Settlement?

The Court has not decided whether the Plaintiffs or the Defendant should win this case. Instead, both sides agreed to a Settlement. That way, they avoid the uncertainties and expenses associated with ongoing litigation, and Class Members will get compensation now rather than, if at all, years from now.

WHO’S INCLUDED IN THE SETTLEMENT?

5. How do I know if I am in the Settlement Class?

You are in the Settlement Class if:

- (a) you received at least one text message on your cellular telephone from PSS,
- (b) you responded to the text message with the response STOP, and
- (c) you received at least one additional text message from PSS apart from any message confirming the your STOP request.

For the full definition of the Settlement Class, please see the Settlement Agreement, which is available by contacting the Settlement Administrator or Class Counsel.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

PSS has agreed to pay a collective Settlement Fund of up to \$450,000 U.S. dollars. The cost to send notice to the class and administer the Settlement as well as attorneys' fees and payments to the Class Representatives will come out of this amount (*see* Question 13). The amount remaining after deducting these costs will be used to pay the claims of eligible Class Members who submit valid claims up to the full amount of either \$750 in cash or a certificate of up to \$1,100 for storage services (which must first be used to satisfy any pending balance with PSS), and reduced *pro rata* if there are insufficient funds, based on the costs above and the number of claims, to make full payment.

Class members may make an election, by checking the appropriate box on the Claim Form, between the \$750 cash payment or the \$1,100 certificate for storage services from PSS. The certificate must be used to satisfy any balance the certificate holder owes to PSS. Certificates may be transferred one (1) time within the first sixty (60) days of issuance, and must be redeemed within ninety (90) days of issuance.

Protection from Future Unauthorized Messages: PSS has agreed to use commercially reasonable efforts to honor "STOP" requests when they are received.

Class Counsel has confirmed that such amounts are the maximum limit of such relief given Defendant's size and financial condition.

7. How much will my payment be?

If you are member of the Class and the Court gives final approval to the Settlement, you may be entitled to receive a check for up to \$750 or a certificate for up to \$1,100 in storage services (The certificate must be used to satisfy any balance the certificate holder owes to PSS.) The amount of your exact payment cannot be calculated at this time. Your payment will depend on the total number of valid claims that are filed. The Class is estimated to include approximately 315 cellphone users. Though unlikely, your payment may be reduced if the amount required to pay in full all valid claims made by Settlement Class Members exceeds the amount available (after paying notice costs, the incentive award, and any approved attorneys' fees and expenses from the Settlement Fund), then each Class Member who filed a valid claim shall receive a reduced share of that Settlement Fund.

You may only make one claim per cellphone number, regardless of how many calls were received.

8. When will I get my payment?

You should receive a check or certificate, depending on your election, from the settlement administrator within 60-90 days after the Settlement has been finally approved and/or after any appeals have been resolved in favor of the Settlement. The hearing to consider the final fairness of the Settlement is scheduled

for [Fairness Hearing Date.] All checks will expire and become void 90 days after they are issued. The certificates must be used to satisfy any balance the certificate holder owes to PSS. Certificates may be transferred one (1) time within the first sixty (60) days of issuance, and must be redeemed within ninety (90) days of issuance.

HOW TO GET BENEFITS

9. How do I get benefits?

If you are a Class Member and you want to participate in the Settlement, you must complete and submit a Claim Form, under penalty of perjury, by **[CLAIMS DEADLINE]**. The Claim form is included with this notice and can be found by calling, toll free, 1-800-000-0000 or by contacting Class Counsel at (720) 213-0675. The Claim Form can be submitted online at the website or by mail. There is only one claim per cellphone number.

REMAINING IN THE SETTLEMENT

10. What am I giving up if I stay in the Class?

If the Settlement becomes final, you will give up your right to sue PSS for the claims being resolved by this Settlement. The specific claims you are giving up against PSS are described in Section ___ of the Settlement Agreement. You will be “releasing” the Defendant and all related people as described in Section 1.3 of the Settlement Agreement. Unless you exclude yourself (*see* Question 15), you are “releasing” the claims, regardless of whether you submit a claim or not. The Settlement Agreement is available at [www.\[settlementwebsite\].com](http://www.[settlementwebsite].com).

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to Class Counsel listed in Questions 12 and 17 for free or you can, of course, talk to your own lawyer if you have questions about what this means.

11. What happens if I do nothing at all?

If you do nothing, you won’t get any benefits from this Settlement. But, unless you exclude yourself, you won’t be able to start a lawsuit or be part of any other lawsuit against the Defendant for the claims being resolved by this Settlement.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in the case?

The Court has appointed Steven Woodrow and Patrick Peluso of Woodrow & Peluso, LLC, and Stefan Coleman of the Law Office of Stefan Coleman, to be the attorneys representing the Settlement Class. They are called “Class Counsel.” They believe, after conducting an extensive investigation, that the Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense. You may also enter an appearance though an attorney if you so desire.

13. How will the lawyers be paid?

Subject to Court approval, Defendants have agreed to pay Class Counsel up to \$100,000 representing 22.22% of the Settlement Fund for attorneys' fees and expenses for investigating the facts, litigating the case, and negotiating the Settlement in this matter. The Court may award less than this amount. Under the Settlement Agreement, any amount awarded to Class Counsel will be paid out of the Settlement Fund.

Subject to approval by the Court, Defendants have agreed to pay \$3,000 to the Class Representative from the Settlement Fund as an incentive award for his services in helping to litigate and settle this case.

EXCLUDING YOURSELF FROM THE SETTLEMENT

15. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter (or request for exclusion) by mail stating that you want to be excluded from *Mendez v. Price Self Storage, Management Inc.* 3:15-cv-02077-AJB-JLB. Your letter or request for exclusion must also include your name, your address, the phone number that received the relevant cellphone calls, and your signature. You must mail your exclusion request so that it is postmarked no later than [Objection/Opt Out Deadline] to:

Settlement Administrator
Mendez v. Price Self Storage, Management Inc.
3:15-cv-02077-AJB-JLB
[Address Line 1]
[Address Line 2]
[TOLL FREE NUMBER]

The Court will exclude from the Class any Class Member who timely requests exclusion.

15. If I don't exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue PSS for the claims being resolved by this Settlement.

16. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, do not submit a Claim Form to ask for benefits.

OBJECTING TO THE SETTLEMENT

17. How do I object to the Settlement?

If you're a Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter stating that you object to the Settlement in *Mendez v. Price Self Storage*,

Management Inc. 3:15-cv-02077-AJB-JLB, and identify all your reasons for your objections (including citations and supporting evidence) and attach any materials you rely on for your objections. Your letter or brief must also include your name, your address, your cellular telephone number that received the unauthorized telephone call(s), and your signature.

Class Counsel will file with the Court and post on its website, www.woodrowpeluso.com, its request for attorneys' fees two weeks prior to the objection deadline.

If you want to appear and speak at the Final Approval Hearing to object to the Settlement, with or without a lawyer (explained below in answer to Question Number 21), you must say so in your letter or brief. Mail the objection to these four different places postmarked no later than **Month 00, 2016**:

Court	Class Counsel	Defense Counsel
The Honorable Anthony J. Battaglia c/o Clerk of the Court US Courthouse 333 West Broadway Suite 420 San Diego, CA 92101	Steven Woodrow, Esq. Class Counsel Woodrow & Peluso, LLC 3900 East Mexico Ave. Ste. 300 Denver, CO 80210 (720) 213-0675	Chad R. Fuller and Virginia Flynn, TROUTMAN SANDERS LLP, 11682 El Camino Real, Suite 400 San Diego, CA 92130-2092

18. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself from the Class is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

19. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Fairness Hearing at [time] on **Month 00, 2016** in Courtroom 3B (3rd Floor - Schwartz), at the United States Courthouse located at 221 West Broadway, Suite 3142, San Diego, CA 92101. The purpose of the hearing will be for the Court to determine whether to approve the Settlement as fair, reasonable, adequate, and in the best interests of the Classes; to consider the Parties' agreement that Class Counsel should be paid 22.22% of the Settlement Funds for attorneys' fees and expenses; and to consider the request for an incentive award to Class Representative in the amount of \$3,000. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement.

The hearing may be postponed to a different date or time without notice, so it is a good idea to check with Class Counsel by calling 720.213.0675. If, however, you timely object to the Settlement and advise the

Court that you intend to appear and speak at the Fairness Hearing, you will receive notice of any change in the date of such Fairness Hearing.

20. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you send an objection or comment, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

21. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intent to Appear in *Mendez v. Price Self Storage, Management Inc.* 3:15-cv-02077-AJB-JLB." It must include your name, address, telephone number and signature as well as the name and address of your lawyer, if one is appearing for you. Your Notice of Intent to Appear must be postmarked no later than **Month 00, 2016**, and be sent to the addresses listed in Question 17. You must also state in your objection that you plan on appearing at the hearing.

GETTING MORE INFORMATION

22. Where do I get more information?

This Notice summarizes the Settlement. More details are in the full Settlement Agreement. You can get a copy of the Settlement Agreement by writing the Settlement Administrator at P.O. Box 0000, City, ST 00000. You can call the Settlement Administrator at 1-800-000-0000 or Class Counsel at 1-720-213-0675, if you have any questions. Before doing so, however, please read this full Notice carefully.